



DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN: 0596-AD40

Conveyance of Small Tracts

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture (USDA), Forest Service is revising regulations to implement certain changes to the Small Tracts Act, enacted in the Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill. These statutory changes raise the value limit of tracts to be conveyed outside of the National Forest System under the Small Tracts Act from \$150,000 to \$500,000, and create a new conveyance category for parcels used as landfills, sewage treatment plants, or cemeteries under a Forest Service special use or other authorization. The changes also direct funds received from the conveyance of certain eligible lands to the Sisk Act fund available to the Secretary of Agriculture. These amendments to the Small Tracts Act are expected to provide the Forest Service with more flexibility for resolving property conflicts with private landowners and alleviate management burden and expense to the Forest Service.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Brad Tait, by phone at 971-806-2199, or via email at bradley.tait@usda.gov. Individuals who use

telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Public Law 97-465, commonly known as the Small Tracts Act (16 U.S.C. 521c-521i), was enacted in 1983 to help the Forest Service resolve land disputes and boundary management problems for parcels that generally were small in scale (less than ten acres) with land values that did not exceed \$150,000. Eligible lands for sale, exchange, or interchange included National Forest System lands encumbered by an encroachment like a shed, house, or fence; roads or road rights-of-way in excess of Forest Service transportation needs; and “mineral survey fractions,” small parcels of National Forest System lands interspersed with or adjacent to lands transferred out of Federal ownership under the mining laws.

Discussion of Amendments to the Small Tracts Act

The Small Tracts Act was amended by Section 8621 of the Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill (Pub. L. 115-334). The provisions included in this final rule implement statutory provisions of the 2018 Farm Bill that are entirely non-discretionary.

The 2018 Farm Bill increases the value limit of eligible parcels from \$150,000 to \$500,000. This modernizes the land value limit, allowing the Forest Service to continue conveying eligible parcels consistent with the intent of the original Act. This final rule implements this increase by revising paragraph (c) of 36 CFR 254.35.

The 2018 Farm Bill also adds a new category for parcels used as cemeteries, landfills, or sewage treatment plants authorized under a special use authorization or other authorization by the Secretary. This allows adjacent communities to have full control over these facilities presently located and permitted on Forest Service land. Currently, communities may only address this situation through special legislation or a land exchange, which can be lengthy and difficult processes. This final rule implements this provision by adding a new paragraph (c) to 36 CFR 254.32.

The 2018 Farm Bill amendments provide that funds received from the conveyance of certain eligible lands shall be deposited into the Sisk Act fund (16 U.S.C. 484a) available to the Secretary of Agriculture. The Secretary may use such funds to acquire land or interests in land for the National Forest System in the State from which the amounts were derived, including, but not limited to, land for administrative sites and recreational access. This final rule implements this provision by adding a new 36 CFR 254.38.

Finally, this final rule revises 36 CFR 254.36(a) to refer to “[a]ll pertinent requirements of this subpart” rather than to requirements of individual subsections of this subpart, which have been changed by the above revisions made by this final rule.

REGULATORY CERTIFICATIONS

Executive Order 12866

Executive Order (EO) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this final rule is not significant.

Executive Order 13771

The final rule has been reviewed in accordance with EO 13771 on reducing regulation and controlling regulatory costs, and is considered an EO deregulatory action.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Regulatory Flexibility Act Analysis

The Agency has considered the final rule under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule would not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final rule would not impose recordkeeping requirements on small entities; would not affect their competitive position in relation to large entities; and would not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Forest Service has determined that this final rule would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Agency has considered this final rule under the requirements of EO 13132, *Federalism*. The Agency has concluded that the final rule conforms with the federalism principles set out in this EO; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency concludes that this final rule does not have federalism implications.

Consultation with Tribal Governments

Tribal consultation is not required for the revisions to the Small Tracts Act regulations effected in this final rule. The changes are not subject to interpretation or further definition. Local notification requirements to Tribes and other individuals for land adjustment activities will occur as required.

No Takings Implications

The Agency has analyzed this final rule in accordance with the principles and criteria found in EO 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*, and has determined that the rule does not pose the risk of a taking of protected private property.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law, or are not already approved for use, and therefore imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 - 3521), and its implementing regulations at 5 CFR part 1320, do not apply.

National Environmental Policy Act

Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The Agency has concluded that the revisions to regulations effected in this final rule fall within this category of actions and that no extraordinary circumstances exist

which would require preparation of an environment assessment or environmental impact statement.

Energy Effects

This final rule has been reviewed under EO 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” It has been determined that this final rule does not constitute a significant energy action as defined in EO 13211.

Civil Justice Reform

The Agency has analyzed this rule in accordance with the principles and criteria of Executive Order 12988, *Civil Justice Reform*. The Agency has not identified any State or local laws or regulations that conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such conflicts were to be identified, the final rule, if implemented, will preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect will be given to this final rule; and (2) the USDA will not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), the Agency has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of \$100 million or more by any State, local, or Tribal governments, or anyone in the private sector. Therefore, statements as described under sections 202 and 205 of the Act are not required.

List of Subjects in 36 CFR Part 254

Community facilities, National forests.

Therefore, for the reasons set forth in the preamble, the Forest Service amends part 254 of title 36 of the Code of Federal Regulations as follows:

PART 254--LANDOWNERSHIP ADJUSTMENT

Subpart C--Conveyance of Small Tracts

1. The authority citation for part 254, subpart C, continues to read:

Authority: Pub. L. 97-465; 96 Stat. 2535.

2. Amend § 254.32 by revising the section heading, and adding paragraph (c) to read as follows:

§254.32 Encroachments and other improvements.

* * * * *

(c) This subpart also allows conveyance of parcels that are used as a cemetery (including a parcel of not more than one acre adjacent to the parcel used as a cemetery), a landfill, or a sewage treatment plant under a special use authorization issued or otherwise authorized by a Forest Service official.

3. Amend § 254.35 by revising paragraph (c) to read as follows:

§254.35 Limitations.

* * * * *

(c) The value of Federal lands conveyed in any transaction, pursuant to this subpart, shall not exceed \$500,000.

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4. Amend § 254.36 by revising paragraph (a) to read as follows:

§254.36 Determining public interest.

(a) All pertinent requirements of this subpart must be met before a determination of public interest is made.

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5. Add § 254.38 to read as follows:

§254.38 Disposition of proceeds.

(a) The net proceeds derived from any sale or exchange in §254.32(c) shall be deposited in the fund commonly known as the “Sisk Act” account.

(b) Amounts deposited shall be available until expended for:

(1) Acquisition of land or interests in land for administrative sites for the National Forest System in the State from which the amounts were derived; or

(2) Acquisition of land or interests in land for inclusion in the National Forest System in that State, including land or interests in land that enhance opportunities for recreational access.

Dated: January 29, 2020.

James E. Hubbard,
Undersecretary,
Natural Resources and Environment.

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